Supreme Court, U.S.
FILED

No.

00-241 AUG 14 2000

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1999

LLOYD G. PERRY

Petitioner

V.

LINDA K. BARNARD et al.

On Petition For Writ Of Certiorari
To The Seventh Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Lloyd G. Perry
Pro Se on record
10027 West, 400 South
Dunkirk, Indiana 47336
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16 copp

1. Are all Judges of the Courts of Appeals and all Justices of the U.S. Supreme Court and Supreme Court Of Indiana obligated to correct their errors; and order the lower courts to correct their errors; and accurately state the merits of the case and the germane laws,in their opinions, orders, entry or appeals?

2. In Civil Rights Law (42 USCS § 1983 for redress of grievances) whereby theft and criminal practices in judicial proceedings resulted in property losses and deprived recovery by deprived use of the judicial systems which intwine both federal and state courts; does the State Supreme Court violate the United States and State Of Indiana Constitutions by refusing to discipline attorneys and judges for criminal acts; contrary to Indiana Code § 33-2-3-1; then barr relief by enjoining the plaintiff from use of the courts, protecting the attorney and not the public?

3. Disqualification of judges requires the filing of an affidavit before recusal; therefore is Title 28 USC § 144, and Title 28 U.S.C.S § 455; are they Constitutional when allowing only one disqualification per case?

4. Encroachment on exclusive jurisdiction by a federal district court and federal court of appeals, on the State Supreme Court's rights to the exclusive jurisdiction; are these encroachments Constitutional when the district court and the Seventh Circuit Court Of Appeals, both evade the questions by refusal to certify the Federal Question of the Constitutionality of Indiana Law, challenging Indiana Code, § 33-2-3-1, to the Indiana Supreme Court (disciplinary issues, and subject matter jurisdiction)? Also the Indiana Supreme Court evades the same Federal Question Jurisdictional issues, by denial of review in an Original Action in pendent state court case. Seventh Circuit Local Rules 52(a) and 52(b) require the certification of the State Law Federal Question to the Indiana Supreme Court and wait for their decision. Under this condition, does the Seventh Circuit Court Of Appeals or the District Court have any jurisdiction over the exclusive subject matter without involvment of the said Indiana Supreme Court? Likewise does the lower State Court?

5. Does any politician have a right to use their political to judicial association for the illegal purpose of obstructing justice for their personal interests and gain; then collect political campaign contributions for the protection the obstructions provided to persons otherwise subject to criminal prosecution and civil liabilities; if not for the shield the obstructions provide.

PARTIES

Lloyd G. Perry, Plaintiff/Appellant/ Petitioner pro se
10025 West, 400 South
Dunkirk,Indiana 47336
Phone (765)768-9915
vs.
Linda K. Barnard, acting Director and Members of
Indiana Supreme Court, Disciplinary Commission:
Sheldon D. Breskow;
Sherill Colvin
G. Daniel Kelly Jr.
Clifford Mashmeyer
James McDonald Jr.
James Pucket
Wesley W. Ratliff Jr.
Itsia Rivera
Sariah B. Davies
Bruce Kotzan
Hansford Mann
James T. Neal
C. Corydon Randall
Randal T. Shepard
Thomas H. Singer
Howard S. Young Jr.
All represented by the Indiana Attorney General
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402 West Washington, Street
Indianapolisl, Indiana, 46204

Indiana Bar Association Presidents;
Rabb Emison
Russ Hart
Represented by; Theadore Lockyear and James A. Kornblum
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P.O. Box 3515
Evansville, Indiana 47734-3515
Phone (812)422-1199
Respondants.

Pursuant to Rules of the Supreme Court of the United States, Rule 29.6; their are no public owned corporations involved in this case.

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2. Lloyd G. Perry v. United States Of America et. al., No. 98-4128 (7th Cir. April 30,1999) Order Judgment. (unpublished)
3. Lloyd G. Perry v. United States Of America et al., No. 98-4128 (7th Cir. May 26, 1999) Rehearing denied. (unpublished)
4. Lloyd G. Perry v. United States of America changed to; Lloyd G. Perry v. Senator Richard Lugar et. al., No. IP 98-677-C-H/G (S.D. Ind. Oct. 23, 1998) Order Entry dismissing the action (unpublished)
5. Lloyd G. Perry v. Senator Richard Lugar, et al., No. IP 98-677-C-H/G Rehearing denied. (unpublished) (S.D. Ind. Nov. 12, 1998) (unpublished)

EARLY RELATED CASES:

1. Lloyd G. Perry v. Paul D. Gresk, et al., No. 84-174-C (S.D. February 21, 1986) (unpublished order) (See Barnard)
2. Lloyd G. Perry v. Linda K. Barnard, et al., No. EV 88-24-C (S.D. Ind. September 26, 1989) (unpublished) (see Writ apdx. injun. pp. 16-19 covering both Gresk and Barnard)
3. Perry v. Barnard et. al., No. 89-3575, 1990 WL 121481 (7th Cir. Aug. 17. 1990) (unpublished order) (omitted)

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2. Perry vs. Fox Contractors Inc., et al., No. 02C01-8908-CT-93. (see injunction (Id.))
3. American General Finance vs. Perry, No. 02D01-9305-CP-832 Allen Superior Court Ind.
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5. Summit Account and Computer Services/ Fort Wayne National Bank vs. Perry, No._____Allen Superior Small Claims, Ind.
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8. A-1 Freeman Moving and Storage vs. Perry Enterprises Inc. - - Perry Enterprises Inc. vs. Portland Trailer and Equipment No.CIV-95-1829-W U.S. District Court, Western District Of Oklahoma.

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10. Perry Enterprises Inc. vs. B.M.I. Transportation Inc., No. 1:96-CV-0547, U.S. District Court Cleveland Ohio Division

11. Trier Ford Lincoln Mercury vs. Perry/ Perry vs. Trier Ford No. 02D01-9702-CP-222 Allen Superior Court Ind.

12. McCarthy Lebit Crystal & Haiman vs. Perry, No. 319861 Court of Common Pleas, Cuyahoga County Ohio, proceeded to collect in Allen Superior Court Small Claims, Ind. No. 02D01-9712-SC-20814

13. Federal Bankruptcy Court, Fort Wayne Ind. Division; Adversary Proceedings; McLane, Trustee vs. Perry, No. 98-1066; in the William Edward Faurote, Jr. and Lois Rose Faurote, bankruptcy, No. 96-10702

14. M.L. or Mary Patterson, vs. Lloyd G. Perry, No. 02d01-9608-SC-15572 Allen Superior Court Small Claims

15 State of Indiana vs. Lloyd G. Perry, No. 98-IF-2238, Allen Superior Traffic and Misdemeanor, Ind.

JURISDICTIONAL STATEMENT

On May 16, 2000 the 7th Circuit Court of Appeals dismissed appellant's appeal without briefing or responding to Appellant's timely objection; and affirmed the lower district court's judgment denying Perry's Trial Rule 60 Motion For Relief From Judgment. Due to an emergency appellant did not file a petition for rehearing.

The issues raised in appellant's Objection was on the bases of lack of subject matter jurisdiction of both the 7th Circuit Court Of Appeals and the U.S. District Court (S.D. Ind., Indy) and the refusal of each to correct their errors and refusal to Certify the State Law Federal Question to the Indiana Supreme Court pursuant to 7th Circuit Local Rules 52(A) and (B). It was clear the 7th Circuit Court had relied on personal statements and the false statements Judge Tinder had published in 745 F. Supp. 1394. The lack of subject matter jurisdiction went back to the original case of *Perry*

vs. Barnard et. al., No. EV 88-24-C (S.D. Ind. September 26, 1989; on appeal to the 7th Circuit August 17, 1990, No. 89-3575, 1990 WL 121481) No part of the proceedings in these cases are being done in accordance with the United States Constitution or the Federal and State Laws germane to the issues.

Jurisdiction of this United States Supreme Court is under *28 USCS § 1254(1); 28 USCS § 1331;*and the *United States Constitution Article III, Section 2, clause 1; Article IV., § 4.*

Jurisdiction of the U.S. District Court Southern District of Indiana Evansville Division was on the bases of Federal Question under *28 USCS § 1331; Redress of grievances;* and the standard of review of "clearly erroneous" under *42 USCS § 1983.*

The lower district court and 7th Circuit Court of Appeals, subject matter jurisdiction is challenged on the bases of encroachment on jurisdiction reserved exclusively for the Indiana Supreme Court under *Indiana Code 33-2-3-1* and the *Indiana Constitution Article III., § 1.; and Article VII., § 4.* with this United States Supreme Court as appellate court, *United States Constitution Article III., § 2., clause 1.* (see Writ apdx. pp. 34,35)

The 7th Circuit Court of Appeals and the district court circumvented Federal Question laws by dismissing the appeal before briefing because Petitioner pushed the issue of false certification by the Evansville Clerk, of a complete record when the certified question request and other parts were missing.

Pursuant to Supreme Court Rule 14(e)(v) notifications pursuant Rule 29.4(b) and (c) have been made.

Constitutional Provisions:

A. United States Constitution, Article III., Section 2. clause 1 and 2. West Black's Law Dictionary Sixth Edition p. 1644, (Wit Apdx. p. 34)

B. United States Constitution, Article IV., Section 4. West Black's Law Dictionary Sixth Edition p. 1645 (Writ Apdx. p.34.)

C. United States Constitution Article I., Section 6 clause 1. West Black's Law Dictionary Sixth Edition p. 1640, (Writ Apdx. p. 34)

D. Constitution of Indiana Article VII § 4 Burns Indiana Statutes, Constitutions,(1997) p. 30 (Writ Apdx. p. 35)

E. Constitution of Indiana Article III § 1. Burns

Indiana Statutes, Constitutions,(1997) p 204. (Writ Apdx. p. 35)

F. Constitution of Indiana Article I § 12 Burns Indiana Statutes, Constitutions,(1997) p. 30. (Writ Apdx. p. 35)

Statutes Involved:

1. 28 USCS § 1651(a) and (b) (see Writ apdx. p 40)
2. 42 USCS § 1983 (see Writ apdx. p. 41,,42)
3. Indiana Code 33-2-3-1, 1995 Replacement p. 113,114. (Writ Apdx. p. 43)

Rooker - Feldman Doctrine, Rutgers Law Review Vol. 42:859 at 860-861 (see Writ Apdx. pp. 44,45)

STATEMENT OF THE CASE

In August, 1999, this Appellant, Lloyd G. Perry filed a petition for writ of certiorari in the case of Perry vs. U.S. under the U.S. Supreme Court docket number 99-310. (see 99-310)

It was Perry's understanding that this U.S. Supreme Court did not act on that said petition of 99-310 on the bases that the Indiana Supreme Court must have the opportunity to rule on the matter of jurisdiction and thus Perry must exhaust all his remedies, which he now has done in compliance to this Court.

The Indiana Supreme Court has had it's chance to make such a decision but declined to do so in the pendent State Court Case of Curtis vs. Perry (supra), (see Lodgings) and again in this instance case, with each chance took evasive action to avoid the inevitable consequences of failure to preform a legal duty.

Senator Richard Lugar's bribery of this Federal District Court Judge, John Daniel Tinder, while Tinder was federal prosecutor; to keep Lugar and attorney, Paul D. Gresk out of trouble for Gresk's aiding in the cover up of the embezzlement (basis of this case) of Perry's $125,000. by bank president George Astrike of Tell City National Bank, while Gresk was retained by Perry to bring suit against the Bank and Astrike; is still working as a shield to prevent Perry's relief from judgment.

Perry has revived this action, though he has been afraid for his life and the lives of any friend that would unknowingly become involved as a witness to some act of a furtherance to this conspiracy of trying to get rid of Perry and the evidence of the crimes that has been committed by the parties named in the case of Perry vs. Gresk. Gresk is the redress subject in *Barnard.*

Criminal activities in civil suit proceedings was the subject matter of disciplinary complaints against Gresk and associates to the Indiana Supreme Court Disciplinary Commission. Said Commission refused to discipline Gresk or any of the others named in the case of Perry vs. Gresk, for those criminal acts that stripped Perry of his right to recover losses and damages. They were sued to redress their § 1983 legal duty.

This Appellant believes that the Supreme Court Of Indiana has a legal duty to discipline and cause restitution to be made to Perry as an agreement to protection the public, pursuant to Indiana Code § 33-2-3-1; Indiana Constitution Article III, § 1. and Article VII. § 4. (Writ Apdx. pp 35 & 43)

However the Indiana Supreme Court, the U.S. District Court with Judge Tinder and the Seventh Circuit Court Of Appeals, all want to evade the issues of the legal duty to discipline, and duty to protect the public. (see lodgings - Apdx.)

In the process of evasive tactics to avoid the legal duty issue, the District Court and the Seventh Circuit Court Of Appeals, has in the opinon of the Appellant, Perry, stripped themselves of any jurisdiction that they might otherwise have had when they chose to keep the issues from being presented to the Indiana Supreme Court, on subject matter that is exclusive to the Indiana Supreme Court.(disciplinary matters; regulating the practice of law) in a case where the Commissioners are defendants and the plaintiff is seeking redress for those commissioners failure to discipline, thus failure to protect Perry.

The same conditions are present in both the challenge to the jurisdiction of the Federal District Court in this instance case and also the pendent State Court of Noble Superior Court, in the case of Curtis vs. Perry and Perry vs. Curtis (supra) with each respective court having issued a permanent injunction against this Appellant, Perry's, use of State or Federal Court Systems.

Adding to this legal duty to protect the public is the clear fact that both the Federal and State Injunctions were issued to protect the defendants of Perry vs. Gresk and later Curtis vs. Perry and Perry vs. Curtis from any civil or criminal recourse that this Appellant Perry may attempt. Thus insuring that the public would not be protected from such criminal activities in the judicial processes, thus voiding the authenticity of due process, and violating Indiana Code § 33-2-3-1 contrary to the intent of the State Law and contrary to the purpose of an injunction.

Adding more, is the fact that Judge John Daniel Tinder was the Federal Prosecutor that this Appellant Perry, took the evidence of the embezzlement, cover-up of the embezzlement and evidence of the Senator Richard Lugar collections of campaign contributions as payments for obstructions of justice, to. Tinder is then appointed Federal Judge over this very case of *Perry vs. Barnard* , would not disqualify and then threw out this case; but insured that no other action would be taken, by issueing the said injunction against Perry and his use of the Court (see Writ Apdx. M. For Relief from Judg. with Brief pp 13-25)

The like condition took place in the case of Curtis vs. Perry /Perry vs. Curtis with an imposed injunction.(see Lodgings)

Again, in this Appellant, Perry's opinion, this type of injunction is illegal from the stand point of it's intended use but more importantly the injunction is of the type exclusive to the Indiana Supreme Court; (restricting, regulating the practice of law)outside the reach of the Federal District Court, or State Court.

Moreover, the exercise of political to judicial association for an illegal purpose, compounded by the collection of campaign contributions as payment in the form of protection money has the Federal and State Courts conducting racketeering operations, under the guise of valid judicial processes.(see *Haley)*

Now, when the case is revived and judge Tinder is feeling safe with his paid protection and the case is again dismissed by Judge Tinder, the appeal process is again, for the second time derailed by Clerks of the Courts. This time by the deputy Clerk at Evansville, (Susan Donigar). (see Pet.Apdx p28)

Mrs. Donigar certified to the Seventh Circuit Court Of Appeals, that the full and complete record was there when in fact the request for certification of the Federal Question to the Indiana Supreme Court had been removed from the file with an order from Judge Tinder to do nothing more with it.

When appellant Perry requested a correction of the lower court record, Mrs Donigar refused to allow appellant Perry to have copies of the record and withheld the record so that the time for filing the brief was almost expired. Appellant Perry requested help from the Seventh Circuit to get the record corrected. Then Judge Tinder went to Chicago and influenced Judge Posner to dismiss the appeal on Tinder's false stated information and information published in the Perry vs. Barnard 745 F. Supp. 1394, which Perry has wanted purged because of it's falsehoods.

The Order (Writ Appendix p.1) falsly states that the issues of the case of Perry vs. Barnard were the result of a bitter divorce and that all the issues had been litigated. Nothing Could be further from the truth. The court added that they had enough evidence and that the the appellant Perry has appealed four times and two times in this case. The objection was timely filed by Perry but again, the Clerk again shows it as filed on May 31, 2000, (out of time) when in fact it was mailed May 25,2000.

Appellant Perry has done everything he should do in compliance with the requirements of this United States Supreme Court, and State and Federal Laws governing the circumstances.

Therefore the only thing remaining is for this United States Supreme Court to take jurisdiction of this case and order the relief to Perry that is long over due, and being evaded.

Every conceivable argument that could be applied to the above stated conditions have been presented to this United States Supreme Court in either the Perry vs. Gresk appeal or the first appeal of Perry vs. Barnard or more exactly in the case of Perry vs. United States under U.S. Supreme Court Docket Number 99-310. (please review) But they still refuse to correct their errors.

According to a report on appeals, boradcast by National Public Radio in May 2000; most cases have to go back to the Court of Appeals from 3 to 6 times before the Court gets it right.

There is no question that the laws of both State and Federal are in appellant Perry's favor, but yet the relief has not been granted nor the issues honestly considered.

When one looks at the purpose of the petition for writ of certiorari as defined by West's Black Law Dictionary, Sixth Edition, page 228; the purpose is to check for irregularities in proceedings. None of these cases have ever received that help.

Argument Favoring Writ

In the order dismissing this petitioner, appellant Perry's Rule 60(b) Motion For Relief, on appeal, the 7th Circuit (see Writ Appdx.p 2) May 15, 2000, stated: " judgment is void if entered by a court without jurisdiction or in contravention of due process." Clearly refusing to admit the facts of the case.

Clearly the Seventh Circuit understands the issue being one of challenge to jurisdiction on the subject matter of discipline of attorneys and judges and the issueing of an injunction that

restricts and regulates Perry's pro se practice of law and access to the courts. But they refuse to acknowledge the contravention of due process by not following their own Local Rule 52; nor requiring Judge Tinder's disqualification under the circumstances Local Seventh Circuit Rule 52(a) and (b):

> Circuit Rule 52. Certification of Questions of State Law
>
> (a) When the rules of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court, sua sponte or on motion of a party, may certify such a question to the state court in accordance with the rules of that court, and may stay the case in this court to wait the state court's decision of the question certified. The certification will be made after the briefs are filed in this court. A motion for certification shall be included in the moving party's brief.
>
> (b) If the state court decides the certified issue, then within 21 days after the issuance of its opinion the parties must file in this court statements of their positions about what action this court should take to complete the resolution of the appeal.

Their clear error, not addressed, is the violation of their own Local Circuit Rules of Rule 52(a) and 52(b) that require the certification of the Federal Question of State Law Challenge to the Indiana Supreme Court on subject matter that pursuant to Indiana Code § 33-2-3-1; has it clearly exclusive to the Indiana Supreme Court, as is the challenge of Constitutionality, if that law is not followed. They refused for the second time to certify the Federal Question. The same is true of the district court. Thus due process ends right there and is contravened.

This petitioner, appellant, Lloyd G. Perry has listed the laws, statutes and constitutional provisions that have been involved in the related cases on this same subject matter that have come to this United States Supreme Court. They are listed within this writ but not all applied to any section herein because they would be redundant, as would any further arguments.

Little more can be said about the issue of lack of subject matter jurisdictiion other than to reinterate the controlling law of *Erie R. Co. v. Tompkins*, 304 U.S. 64 cited in *Hanna v. Plumer*, 380 U.S. 460, 471 ¶ 3 all to page 472;

> [W]e are reminded by the Erie opinion that neither Congress nor the Federal Courts, can, under the guise of formulating rules of decision for federal courts, fashion rules which are not supported by a grant of federal authority contained in Article I or some other section of the Constitution; in such areas state law must govern because there can be no other law. - - -

When Erie is applied to this case Indiana Code § 33-2-3-1; the Indiana Constitution Article VII. § 4, and Article III. § 1 and Article I. § 12 are all controlling over the subject matter. (see Writ Apdx. pp. 43, 35)

The Indiana Supreme Court, therefore can not escape it's legal duty to protect the public, which includes Perry, from a very corrupt State and Federal Judicial Systems within the bounds of the State Of Indiana, without risk to it's exclusive right

Moreover, in applying Erie to the Federal District Court and the Seventh Circuit Court of Appeals, neither of these said courts can use Title 28 USCS § 1651 (see Writ Apdx p. 40) to override and encroach upon the areas of law assigned to the Indiana Supreme Court, because paragraph (a) requires agreeable with usage and principles of law. That injunction is contrary to the State of Indiana Laws; and contrary to the assignment of laws by Article III. Section 1. of the United States Constitution:

> "*The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.*"

And Amendment X. of the United States Constitution:

> "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*"

And for redress under Amendment I.

> " *Congress shall make no law- - - abridging the freedom- - - to petition the Government for a redress of grievances.*"

Clearly, there has been a serious violation of petitioner, Lloyd G. Perry's United States Constitutional Rights by both the Lower District Court and Judge John Tinder and also the Seventh Circuit Court Of Appeals and Judge Richard A. Posner. But in truth these violations extend into the Indiana Supreme Court and the defendant commissioners herein named and their followers.

These people can not deny petitioner Perry a right to redress the flawed proceedings that took place in the State Supreme Court Disciplinary Commission. Nor can they deprive Perry his property rights, and rights to equal protection and equal immunities guaranteed by the United States Constitution Amendment XIV, Section 1, United States Constitution.

Who ever heard of the issueing of an injunction for the purpose of depriving such guaranteeds as forthsaid above and doing so to aid criminal activities that are being conducted in the judicial processess. There could be no more of a direct attack on the United States Constitution and it's provisions than are documented in this appeal and all it's related cases. Amendment X. says that Perry can make the application for redress and so does Title 42 § 1983 and also Indiana Constitution Article I. § 12 A close look at the complaint and it is clear beyond question that redress was the basis for the action. Petitioner wants this Supreme Court to use this writ and ferret out this corruption and clean up the courts and make them a respectable place again.

There can not be a greater impact toward the corrupting of the Judicial Systems on all levels, than has been demonstrated in the cases petitioner Perry has brought before this United States Supreme Court, that have been effected by the Political To Judicial Association and the payment of campaign contributions as a form of protection money to encourage that association and the obstructions of justice expected by the payor. It must Stop! (see *Healy v. James* 33 L Ed 2d 865 @ 896 Writ Appdx. p. 33)

The Federal and State Courts as they stand today have gotten to far away from the due process and required procedures to be called a fair court system anymore. This United States Supreme Court is the "court of last resort" and the only Court with the power and jurisdiction needed to put things back like they should be and get the politicians out of the Courts and jurisprudence back in. (see Rules *Of The Supreme Court* of The United States, Rule 10 (a) and (c))

Summary:

When applying Erie and also Hanna we see that the Federal District Court in this case of Perry v. Barnard 745 F. Supp. 1394 @ 1408 used the Federal Statutes of 28 USCS § 1651 to override the exclusive jurisdiction of the Indiana Supreme Court granted by Statute Indiana Code 33-2-3-1 1997, Replacement pp.113-114 and Indiana Constitution Article VII., § 4; Article III., § 1, Burns Indiana Statutes, Constitutions, 1997 Replacement pp204 and 277; and issued an injunction against Perry restricting and regulating Perry's practice of law. (though the practice was for his own personal use only) They did not read the law and the qualifications the law required to write the writ (§ 1651) They wrote the injunction outside their jurisdictions by encroaching upon the Indiana Supreme Court Jurisdiction. Perry was damaged as the result of the many deprivations this condition brought on, along with the deprivations and resulting damages brought on by the failure of the herein named defendants to preform their legal duty and protect Perry and likewise the remaining public.

In Perry's complaint as the alternative, he has made his claim, when combined in all three counts, of $378 million dollars.

Petitioner, Lloyd G. Perry, respectfully request from this United States Supreme Court, relief, after all this time and all the run arounds, in the form of a Judgment in favor of petitioner, Lloyd G. Perry and against each and all of the here in named defendants that;

A. Strikes down the injunction on the bases of being Un-Constitutional and issued outside jurisdictional bounds;

B. Award full and complete damages with interest in favor of petitioner Perry and against each and all the herein named defendants.

C. All other just and proper relief in the premises.

Respectfully submitted by,

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Dunkirk,Indiana 47336
Phone (765)768-9915

APPENDIX

APPENDICES

SUBJECT:		PAGE NO:
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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
May 26, 1999
Before

Hon. Richard A. Posner, Chief Judge
Hon. Joel M Flaum, Circuit Judge
Hon. Diane P. Wood, Circuit Judge

Lloyd G. Perry, Plaintiff-Appellant,	) Appeal from the United States) District Court for the) Southern District of Indiana,
No. 00-1725 v.	) Evansville Division.) No. 88 C 24
Linda K. Barnard, Sheldon D. Breskow, Sherrill W. Colvin, et, al.	)))
Defendant-Appellees.	) John D. Tinder, Judge.

The following are before the court:

1. Motion For An Order Of Stipulation, filed April 28, 2000, by the pro se appellant;
2. Motion to Supplement Short Appendix, filed April 28, 2000, by pro se appellant;

This is Lloyd Perry's fourth appeal-the second in this case-stemming from a bitter divorce, which was litigated in the Indiana State Courts. Initially, Perry sued the attorney and judge from his divorce proceeding, alleging a conspiracy to violate his civil rights, but the district court dismissed the case and this court affirmed. *See Perry v. Gresk*, 805 F.2d 1038 (7th Cir. 1986) (table). Perry followed with disciplinary complaints in the Indiana Supreme Court, but the attorneys and the jude were not disciplined, so Perry sued the Judicial Nominating Study Commission of the Indiana Supreme Court, the Disciplinary Commission, and past presidents of the Indiana Bar Association under 42 U.S.C. § 1983, alleging that they violated a duty to discipline the judges and attorneys whom Perry claims conspired to defraud him. The district court dismissed, awarded partial attorney fees under Federal Rule of Civil Procedure 11 to the

defendants, and entered an injunction restraining Perry and anyone acting on his behalf from litigating any lawsuit [PAGE 2] arising out of or related to *Gresk*. *See Perry v. Barnard*, 745 F. supp. 1394 (S.D Ind. 1990), aff'd, No. 89-3575, 1990 WL 121481 (7th Cir. Aug. 17, 1990) (unpublished order). In the interim, Perry sued several judges and elected officials to have the injunction overturned, but this court upheld the dismissal of the case and issued a rule to show cause why Perry should not be sanctioned for filing a frivolous appeal. *See Perry v. United States*, No. 98-4128, 1999 WL 272406 (7th Cir. Apr. 22, 1999) (unpublished order).

This appeal is from the district court's rejection of Perry's Motion For Relief from Judgment under Federal Rule of Civil Procedure 60(b)(4). The district court correctly held that the judgment was not void. *Cf. FEC v. Al Salvi for Senate Comm.*, 205 F. 3d 1015, 1019 (7th Cir. 2000) (judgment is void if entered by a court without jurisdiction or in contravention of due process). We conclude that this appeal is frivolous, and that the filing of briefs would not be helpful to our consideration of the issues and summary affirmance is appropriate. *See Taylor v. City of New Albany*, 979 F.2d 87 (7th Cir. 1992); *see also Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing or argument). Accordingly,

IT IS ORDERED that the judgment of the district court is summarily AFFIRMED, and that #1 and #2 are DENIED as moot.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

Lloyd G. Perry, Plaintiff,	)	
vs.	)	EV 88-24-C-T/H
Linda K. Barnard, et al., Defendants.	)	

ENTRY DISCUSSING POST-JUDGMENT
MOTIONS FILED DECEMBER 27, 1999

This cause is before the court on the plaintiff's most recent post-judgment motions, each filed on December 27, 1999. These motion (1) seek and expidited ruling, and (2) seek to have the judgment issued on September 26, 1989, vacated.

For the reasons explained in this Entry, the plaintiff's motion for expedited consideration of his Rule 60(b) motion is granted, and the Rule 60(b) motion itself is denied.

I

Plaintiff, Lloyd Perry seeks expidited resolution of his motion for relief pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. He seeks expidited treatment because he believes his case for relief is clear and hence that no reason exists for delay.

The court agrees with Perry that the prompt disposition of his Rule 60(b) motion is both possible and the best course in this situation. Accordingly, Perry's motion for the expedited resolution of his motion for relief pursuant to Rule 60(b) is granted.

II.

A.

Perry brought a civil rights action pursuant to 42 U.S.C. § 1983 against a host of individuals he felt had combined to deprive him of just results in litigation to which he was party in the state courts of Indiana. Perry did not prevail. See *Perry v. Gresk*, No. 86-1765 (7th Cir. november 21, 1986) (unpublished order).

A sequel ensued, being the present case. Perry contended that misconduct and mischief had thwarted his earlier federal lawsuit. Again, Perry did not prevail. See *Perry v. Barnard,* No. 89-3575 (7th Cir. August 17, 1990) (unpublished)

A third iteration of Perry's discontent was manifested in a lawsuit assigned to Judge Hamilton's docket as IP98-0667-C. Again, Perry did not prevail. See *Perry v. United States of America, et al.,* 98-4128 (7th Cir. April 30,1999) (unpublished order)

In the motion now under consideration, Perry asserts that this court lacked jurisdiction to issue the final judgment and the injunction restricting his filing in certain respects of further litigation in any federal district court. His arguments appear to be that (1) this litigation was as infected with unethical lawyering and corruption as he attributes to *Perry v. Gresk,* (2) the injunction restricting his filing in certain respects was imposed for an improper purpose, and (3) the injunction restricting his filing in certain respects encroaches on the exclusive authority of the Indiana Supreme Court to regulate the practice of law within the State of Indiana.

He also contends that the injunction restricting his filing in certain respects was issued without notice to him. Perry's motion is presented pursuant to Rule 60(b) of the *Federal Rules of Civil Procedure.*

B.

Federal Rule of Civil Procedure (60(b) provides that a party may be relieved of a judgment in cases involving:
(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, . . . misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other rreason justifying relief from the operation of the judgment.

Considering Perry's refrain that the judgment and injunction of this court issued on September 26, 1989, are "void," his Rule 60(b) motion filed on December 27, 1999, is treated as

asserting a ground for relief under Rule 60(b)(4). Looking closely at the motion, moreover, leaves little doubt that Perry is challenging only the injunction, and not the accompanying judgment dismissing his claims as without merit.

Relief from judgment under Rule 60 is an extraordinary remedy which should only be granted inexceptional circumstances. *Del Camen v. Emerson Electric Co.*, 908 F.2d 158,161 (7th Cir. 1990); *C.K.S. Engineers, Inc. v. White Mountain Gypsum Co.*, 726 F.2d 1202, 1205 (7th Cir. 1984) Typically, such relief is warranted "only upon a showing of extraordinary circumstances that create substantial danger that the underlying judgment was unjust." *Margoles v. Johns, 798 F.2d 1069, 1073 (7th Cir. 1986).* When, however, the motion is based on a void judgment under Rule 60(b)(4), the district court has no discretion, the judgment is either void or it is not. *Recreational Properties, Inc. v. Southwest Mortgage Service Corp.*, 804 F.2d 311,313-314 (5th Cir. 1986). Unlike motions pursuant to other subsections of Rule 60(b), Rule 60(b)(4) motions leave no margin for consideration of the district court's discreation as the judgments themselves are by definition either legal nullities or not.

"A void judgment is one which, from its inception, was a complete nullity and without legal effect." *United States v. Zima*, 766 F.2d 1153,1159 (7th Cir. 1985). This principle builds upon the fact that the lower federal courts are courts of limited jurisdiction, from which it is presumed that a case lies outside the jurisdiction of the federal courts unles proven otherwise. *Kokkonen v. Guardian Life Ins. Co. Of America*, 511 U.S. 375, 376-78 (1994).

As Perry's most recent motion and his supporting brief acknowledg, this action was brought to vindicate the asserted violation of his federally secured rights. This court's subject matter jurisdiction over the action is conferred by 28 U.S.C. § 1343, which states;

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United

States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

The court also had subject matter jurisdiction over such claims based on 28 U.S.C. § 1331, which provides that "[t]he District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

With the foregoing review in mind, it can next be determined whether any of the circumstances now put forth by Perry render the injunction "void".

1. Perry first argues that the injunction is invalid because this action was tainted with misconduct on the part of the parties, their counsel, and the court. These tired and baseless allegations warrant only the response here that any mischief of this nature could and would have been uncovered more than a decade ago. Perry's post hoc inventions for why the decision in this case was adverse to him does not remotely suggest that the court lacked the jurisdiction to adjudicate the claims in this action and issue the related injunction.

2. Perry next contends that the injunction was issued for an improper purpose. Not so. The purpose of the injunction is plain from the wording used; thus, the purpose was to restrict Perry in his ability to further harass and harm the parties and lawyers associated with this case and with *Perry v. Gresk* by the filing of unwarranted lawsuits and further abuse of the court. Even if Perry persists in his belief that the injunction was entered for some other purpose, the "purpose" for which a ruling is made does not add or subtract from a court's authority or jurisdiction to make the ruling. Perry's argument here is a challenge to the appropriateness of the injunction, and as such it comes to late, and comes after the issuance of the injunction has already been determined proper by the Court of Appeals.

3. Perry's third argument is that the injunction entered in this case infringed on the Indiana supreme Court's exclusive right to regulate the practice of law in Indiana. That authority, however, extends to regulating the practice of law within the state courts of Indiana. A federal district court has inherent authority to do likewise with respect to its own court, *Spevack v. Klein*, 385 U.S. 511, 524 (1967) (Harlan, J., dissenting) (courts "have endeavored to regulate the qualification and practice of lawyers,

always in hope that this might better assure the integrity and evenhandedness of the administration of justice. . . since the 17th century") , though that is hardly a fair or accurate description of what occurred in this case. Perry's ability to pursue claims in the state courts of Indiana was not impacted by the injunction issued by this court. His contention otherwise is unfounded. The authority to enter an injunction such as issued against Perry in this case is perfectly evident. "'Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions."' *In re McDonald,* 109 S.Ct. 993, 996 n.8 (1989) (quoting *In re Martin-Trigona,* 737 F.2d 1254, 1261 (2d Cir. 1984)); 28 U.S.C. § 1651(a) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). The courts have "made clear that a pattern of groundless and vexatious litigation will justify an order prohibiting further filings without permission of the court." *Chipps v. U.S. District Court,* 882 F.2w 72, 73 (3rd Cir. 1989)

4. Perry's final challenge to the injunction as void is that it was issued without adequate notice to him. This is untrue, in that the defendants had sought the imposition of sanctions through written filings months before the injunction was issued. even if the sanctions came as a suprise to Perry, moreover, his appeal should have left him with no question that the injunction was "carefully tailored," was "reasonable," and was within the power of the court. *Perry v. Barnard,* No. 89-3575 (7th Cir. August 17, 1990)

C.

Perry persists in abusing the legitimate purposes of the courts. He does at bottom for the evident reason that he does not agree with the results he has encountered or the processes undertaken to produce those results. In *Homola v. McNamara,* 59 F.3d 647,650 (7th Cir. 1995), Judge Esterbrook made the following observations for a panel of the Seventh Circuit Court of Appeals:

Litigation is society's way to resolve disputes. Courts invite parties to make their evidence and arguments known.

Appellate courts correct errors. After the process has run its course, there should be peace between the former adversaries. Many persons do not see litigation this way, however. They adopt a never-say-die attitude. If the first case goes against them, then some chicanery must be to blame. Now if the courts are unable to separate truth from fiction - - the premise of this attitude toward the results of litigation - -one would suppose that the remedy lies in a political forum, or perhaps in an occasion for writing an expose. Yet man litigants who refuse to accept judgments against them see their balm as - - more litigation!

The injunction Perry seeks to have vacated is either void or it is not. It is not. Accordingly, Perry's motion for relief from that judgment is denied.

Consistent with the expedited review which Perry's Rule 60(b) motion has received, this Entry shall be docketed and distribuited from the Indianapolis Division of the Clerk's Office

IT IS SO ORDERED.

"s/ "

John D. Tinder, Judge
United States District Court

Date: 12/30/99

Copies to: Lloyd G. Perry, 2007 South Phillip Drive, Muncie Indiana 47302; Theadore Lockyear, Lockyear & Kornblum, 555 Sycamore St. Evansville, In 47734; Jan Kreuscher, Office of the Indiana Attorney General, Indiana Government Center South, Fifth Floor, 402 West Washington Street, Indianapolis, In 46204-2770.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LLOYD G. PERRY, Plaintiff,	)	
vs.	)	EV 88-24-C
LINDA K. BARNARD, et al., Defendants.	)	

ORDER ENJOINING PLAINTIFF PERRY

Lloyd G. Perry is hereby permanently ENJOINED from filing (or having filed on his behalf) in any federal district court without leave of that court, any lawsuit arising out of or related to Perry v. Gresk, No. EV 84-174-C (S.D. Ind. February 21, 1986) (unreported), aff'd, No. 86 1765 (7th Cir. November 21, 1986) (unreported), as well as this cause of action.

Specifically, Perry is permanently ENJOINED from filing (or having filed on his behalf) in any federal district court without leave of that court, any lawsuit against one or more of the following parties who were named as defendants in either Perry v. Gresk or Perry v. Barnard:

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
CERTIFIED:
A TRUE COPY
"s/_____".
CLERK OR DEPUTY
6-6-97
GERALDINE
TREUTELLAR CROCKETT
CLERK

Paul D. Gresk
Ralph P. Zoercher
George Astrike
Tell City National Bank

William C. Welborn
Georgia Surety Company
C. Lawrence Jewett
Phillip C. Moulthorop
American Druggists' Insurancy Company
Insurance Company of North America
Lamar Street
Roger H. West
Kelco of Indiana, Inc.
Kelco Inc.
Tri-State Reclamation, Inc.
Roger S. Curry
Lee Ringman
Jasper State Bank
German American Bank
James DeMotte
David Hubster
Jasper Engine & Transmission, Inc.,
James J. Hartz
C.I.T. Corporation
Christopher Baker
Patrick McSoley
William Beckman
John B. Scales
Jennie L. Richardson
Raymond G. Fritz
George Meece, Jr.
State of Indiana, Division of Reclamation of the Indiana Department of Natural Resources
The Indiana State Attorney General
Larry E. Forler

Linda K. Barnard
Sheldon D. Breskow
Sherill Colvin
G. Daniel Kelley Jr.
Clifford Mashmeyer
James McDonald, Jr.James Puckett
Wesley W. Ratliff, Jr.
Itsia Rivera
Sarah B. Davies

Bruce Kotzan
Hansford Mann
James T. Neal
C. Corydon Randall
Randal T. Shepard
Thomas H. Singer
Howard S. Young, Jr.
Rabb Emison
Russ Hart

Perry is also permanently ENJOINED from filing (or having filed on his behalf) in any federal district court without leave of that court, any lawsuit arising out of or related to any issue of issues in Perry v. gresk, which was a complaint under 42 U.S.C. § 1983 and § 1985 with pendent state claims against various attorneys, parties and witnesses who were involved in previous lawsuits with Perry; and any lawsuit arising out of or related to any issue or issues in Perry v. Barnard, which was a complaint under 42 U.S.C. § 1983 against those defendants for failing to act on his requests for disciplinary action against various attorneys and judges who were also involved in previous lawsuits with Perry.

The following procedures are to be followed in order to comply with this injunction. In seeking leave to file a complaint concerning the above--stated matters, in this or any other federal district court, Perry (or anyone else acting in his behalf) must file with the complaint a motion captioned "Motion pursuant to Court Order Seeking Leave to File." The following documents must be attached to that motion: 1) a copy of this order and the accompanying entry and judgment; 2) a sworn affidavit certifying that the claims that he wishes to present are new claims never before raised by him in any state or federal court; 3) a list of the full captions of each and every suit previously filed by him or on his behalf against each and every defendant; 4) a copy of each such complaint and a certified record of its disposition. A copy of this order must be served on each defendant when and if leave to file the new case is granted. Any such action that Perry, or anyone acting on his behalf, seeks to file in any federal district court will not be file marked until the judge of that court grants Perry or anyone acting on his behalf leave to file.

Upon failure to comply with any of the terms of this injunction, Perry may be found in contempt of this court and

punished accordingly. Any defendant in any federal court suit who believes that Perry has failed to comply with the terms of this injunction may file an affidavit to that effect with the Clerk of the court, Southern District of Indiana, Evansville Division, under the EV 88-24-C docket number.

Nothing in this order shall be construed as affecting Perry's ability to defend himself in any criminal action. Nothing in this order shall be construed to deny Perry access to the federal courts through the filing of a petition for a writ of habeas corpus or other extraordinary writ. Nothing in this order shall be construed as denying Perry access to the United States Court of Appeals.

IT IS SO ORDERED this 26th day of September 1989.

"s/ _____ "
John Daniel Tinder, Judge
United States District Court

copies to;
Lloyd G. Perry
7999 Meadow Lane
Newburgh, IN. 47630

Robert Spear
Deputy Attorney General
Office of the Attorney General
Room 219, State House
Indianapolis, IN 46204

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Evansville, IN 47734-3515

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LLOYD G. PERRY, Plaintiff,	)	
vs.	)	EV 88-24-C
LINDA K. BARNARD, et al., Defendants.	)	

MOTION FOR RELIEF FROM JUDGMENT OF SEPTEMBER 26, 1989, PURSUANT TO TRIAL RULE 60(b) of F.R.C.P.
EXPIDITED PROCEEDINGS REQUESTED TO PREVENT FURTHER DAMAGES

Comes now the plaintiff, Lloyd G. Perry, in person and pro se and moves this Court by Motion For Relief From Judgment of September 26, 1989, pursuant to the terms and conditions of Trial Rule 60(b) of the Federal Rules of Civil Procedure based on fraud and misconduct of opposing parties and the prejudice of the Court with the Court lacking subject matter jurisdiction over the issued permanent injunction within this above entitled case of Perry vs. Barnard. Perry requests expidited proceedings to prevent further damages from the injunction.

Plaintiff Perry cites the Federal Civil Rights Laws of Title 42 USCS § 1983 and § 1985 together with Title 28 USCS § 1346(a)(2)(b) as being a Civil Rights Violation if the Judgment is let stand. A review of the record shows the bias and prejudices.

21A Fed Proc, L Ed § 51:166 (1999 Ed.)
Void Judgment, general pp. 438, 439.

> [T]he right to relief from a void judgment is absolute and not a matter within the Court's discretion. Nor do the time limitations applicable generally to FRCP 60(b) ordinarily apply to motions seeking relief from voidness, and the moving party need not show diligence in seeking to overturn the judgment or a meritorious defense. (citing from 5th Circuit e.g. *Brazosport Towing Co.* v.3,838 Tons of Sorghum (1984, SD Tex) 607 F. Supp 11, affid without op

(CA5 Tex) 790 F.2d 891

21A Fed Proc, L Ed § 51:167 (1999 Ed.)
What Judgments are void pp. 439, 441 at 440 last 5 lines on 441.
[R]ather, judgments are void only if the court lacked jurisdiction of either the parties or the subject matter, entered a decree not within the powers granted to it by law, or if the judgment was entered in violation of due process of law; or as is sometimes stated, if the court's action in rendering judgment beyond its scope of authority amounts to a plain usurpation of power, (citing *United States v. Zima* (1985 CA7Ind.) 766 F.2d 1153,also citing *Hoult v. Hoult* (1995) CA1 Mass) 57 F3d 1; also citing *Schwartz v. U.S.* (1992) CA4 Md.) 976 F2d 213 at 217 col. 1. parg. [2]

During the active litigation of the above entitled case plaintiff Perry stated that this Court had placed the said injunction on Perry by illegal means for an illegal purpose. The illegal means was the lack of subject matter jurisdiction over the issueing of the injunction and the placement of the injunction without bond; the illegal purpose was on the bases that the injunction did not seek to protect the public from someone that was abusing the Court system but rather was placed to protect those persons (both private persons and attorneys) that were. Persons using illegal (criminal) practices in procedure to void due process in the Court system or for illegal gain or for some other illegal purposes, most instances defined as racketeering. (see case of Perry vs. Gresk which forms the bases of this instance case. The case history shows Judge Tinder should have recused .

By placing the injunction on plaintiff Perry, that restricted his use of the Federal Court system, preventing his practice of pro se litigation for himself, and that sought to restrict and regulate Perry's practice of pro se law, was an encroachment of the exclusive jurisdiction of the Indiana Supreme Court pursuant to Indiana Code , 33-2-3-1 (1997 Ed.) pp. 113,114 Sec. 1.

> Sec. 1. The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to issue restraining orders and injunctions in all cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe.

Also Indiana Constitution Article VII., § 4, Burns Indiana Statutes, Constitutions 1997 Ed. p. 30 and also Article III., § 1, p. 204.

> Article VII., § 4, Jurisdiction of Supreme Court.
> The Supreme Court shall have no original jurisdiction except in admission to the practice of law; discipline or admission to the practice of law; discipline or disbarment of those admitted; the unauthorized practice of law; discipline, removal, and retirement of justices and judges; supervision of the exercise of jurisdiction by the other courts of the State; and issuance or writs necessary or appropriate in aid of its jurisdiction. The Supreme Court shall exercise appellate jurisdiction under such terms and conditions as specified by rules except that appeals from a judgment imposing a sentence of death, life imprisonment or imprisonment for a term greater than fifty years shall be taken directly to the Supreme Court. The Supreme Court shall have, in all appeals of criminal cases, the power to review all questions of law and to review and revise the sentence imposed. - - As amended - -

Not only does the placement of the said permanent injunction by this Court on Perry, encroach upon the exclusive jurisdiction of the Indiana Supreme Court to regulate such matters; and did so without any written notice, complaint, or Order to stop; but it also violates the terms and conditions of the United States Constitution Amendment XIV, as to right to equal rights, priviledges and immunities and further violates the Indiana Constitution Article I., § 12, with emphasis when you consider

that Perry did not abuse the system but was properly using the Court System to recovery his losses and damages and did not violate any laws in relation to the unauthorized practice of law, but was acting consistent with the terms and conditions of the said Article I., § 12. These issues are for the Indiana Supreme Court to determine in this State and not for any other Court.

Therefore plaintiff Lloyd G. Perry moves this United States District Court by Motion For Relief From Judgment on the bases of the judgment being void for lack of subject matter jurisdiction over the entire matter and with emphasis over the permanent injuction; and abuse of power that deprived due process and equal protection of the law; and that the permanent injunction is unconstitutional, and violates the United States Constitution Amendment XIV, and the Indiana Constitution Article I., § 12. Plaintiff Perry requests and Order be issued in favor of the plaintiff Perry and against the defendants in the above entitled case of Perry vs. Barnard et al., that voids the judgment and injunction, for lack of subject matter jurisdiction, with all other just and proper relief in the premises.

Respectfully submitted by;

"s/ "

Lloyd G. Perry, Deft. pro se
2007 South Phillip Drive
Muncie, Indiana 47302
Phone (765)282-7924

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LLOYD G. PERRY, Plaintiff,	)	
vs.	)	EV 88-24-C
LINDA K. BARNARD, et al., Defendants.	)	

B R I E F
IN SUPPORT OF PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT OF SEPTEMBER 26, 1989, PURSUANT TO TRIAL RULE 60(b) of F.R.C.P. EXPIDITED PROCEEDINGS REQUESTED TO PREVENT FURTHER DAMAGES

Comes now the plaintiff, Lloyd G. Perry, in person and pro se and moves this District Court by Motion For Relief From Judgment of September 26, 1989, pursuant to the terms and conditions of *Trial Rule 60(b)* of the Federal Rules Of Civil Procedure. Expidited Proceedings Requested to prevent further damage. (attach. Exhbt. "A" is injunction)

I. STATEMENT ON JURISDICTION:

Relief from Judgment and the injunction is due because this District Court and Judge John D. Tinder lacked subject matter Jurisdiction. (See motion for 21A Fed Proc, L Ed § 51:166 and § 51:167) all items that would void were present in the case.

Because of the absence of very specific wording in specific language to this District Court and to Judge John D. Tinder; stating that he is acting outside his jurisdiction and is encroaching upon the exclusive jurisdiction of the Indiana Supreme Court, by hearing the issues of this instance case of Perry vs. Barnard; and then placing an injunction on plaintiff Perry. That is encrochment on the exclusive jurisdiction of the

Indiana Supreme Court pursuant to *Indiana Code 33-2-3-1* and the *Indiana Constitution Article VII. § 4*; and *Article III. § 1*, of Burns Indiana Statutes, 1997 Replacement pp. 204 and 277 ; that because of that missing language, this Motion For Relief is being filed once again so as to meet the requirements of the Original Action Rules of the Indiana Supreme Court prior to filing such an original action therein. You must have been specifically informed and you were but not inclusive of the Indiana Code 33-2-3-1 as a violation of exclusive jurisdiction of the Indiana Supreme Court.

At this point plaintiff Perry inserts by reference the full and complete First Amended Complaint from the case of Perry vs. U.S. et. al.;U.S. District Court Indianapolis Division under Case No. IP 98-0667-C-H/G in it's full and complete form with full and complete effect as if fully written herein. In this case Judge John D. Tinder was a defendant party; wherein the issues of jurisidction and the lack of it could not be denied but was with impudence.

The same denial and display of impudence was demonstrated by the Seventh Circuit Court of Appeals in that same case (Id.) with Perry even asking both the lower District Court and the Seventh Circuit Court of Appeals to Certify the question of Jurisdiction to the Indiana Supreme Court. There is a total disregard for the exclusive jurisdiction of the State Supreme Court by the U.S. District Courts and the Seventh Circuit.

The United States Supreme Court, in full honor and respective of the exclusive jurisdiction of the Indiana Supreme Court withheld action. The matters had not been to the Indiana Supreme Court due to a verbal bar to the Indiana Supreme Court and Indiana Court Of Appeals against Perry's use of these said Courts, untill now. Those doors are now open and in the absence of an immediate Order voiding the judgment and injunction of September 26, 1989, the issues of jurisdiction of the case of vs. Barnard will be heard by the Indiana Supreme Court and if not settled there the case will again go back to the U.S. Supreme Court.

II. STATEMENT OF FACTS:

1. That plaintiff has maintained that this District Court had placed the injunction by illegal means for an illegal purpose. Meaning that they lacked jurisdiction to place such an injunction

and that they placed it without surety bond; and that it was placed to protect the criminal activities within the processes that were used to obstruct justice.

2. That the plaintiff had not received any notice, nor complaint nor Order to stop his litigation but was sanctioned with the injunction and fine without such a notice or complaint.

3. That the injunction was placed on Perry , not because he had violated any law or abused the system but rather as a protection to those opposing parties that had committed unethical and criminal acts in the processes of the Courts or business transactions that would cause any reasonable person to bring suite against those said criminal and unethical acts but the injunction prevented that justice from comming.

4. Judge John D. Tinder was under an obligation to disqualify himself from the case by reason that he had reviewed documents and interviewed Plaintiff Perry in relation to some of the said unethical and criminal acts directly related to parties within the Perry vs. Barnard case and at issue in the case. His failed prosecution of the crimes and the timely receiving of the judgeship were more than any reasonable person could deny as being a bribe to avoid prosecution by the appointing party (Lugar in his own interests and that of Gresk appointing Tinder so that Tinder as Federal Prosecutor would not prosecute Lugar and Gresk for aiding in the coverup of the embezzelment of Perry's money in the Tell City National Bank, Jasper State Bank and German American Bank in Jasper Indiana.)

5. Judge Tinder knew he did not have jurisdiction to issue an injunction against Perry but sought to do so anyway based on the provisions of *Title 28 USCS § 1651(a)&(b),* which if reviewed makes clear that they must first have jurisdiction and second that it is in accordance with the law. Both items were absent. (see fact within *Perry vs. Barnard* 745 F. Supp. 1394 @ 1408)

6. It should be clear to Judge Tinder, Judge Hamilton and Judge Posner that the Indiana Supreme Court has an exclusive jurisdiction over the issueing of injunctions that pretain to the practice or un-authorized practice of law in the State Of Indiana; now having gone thru the appeal process all the way to the U.S. Supreme Court.

Cooperation of this District Court would be helpful in the issueing of an Order voiding the judgment and the injunction of the case of Perry vs. Barnard et al., as a matter of law based upon lack of subject matter jurisdiction, that the injunction violates the United States Constitution Amendment XIV, on equal rights, equal immunities, equal priviledges; and violates Indiana Constitution Article I. § 12, free unobstructed access to the Courts - due course - equal protection.

III. ARGUMENT:

In the citation of the case of Perry vs. Barnard et. al. (supra) Judge Tinder stated that he gained jurisdiction by use of the provisions of Title 28 USCS § 1651(a)&(b).

In citing *Hanna v. Plumer*, 380 U.S. 460, 471, paragh. 3 all to page 472, first line; (is citing Erie opinion)

> [W]e are reminded by the Erie opinion that neither Congress nor the Federal courts can, under the guise of formulating rules of decision for federal courts, fashion rules which are not supported by a grant of federal authority contained in Article I or some other section of the Constitution; in such areas state law must govern because there can be no other law. - -
>
> In Erie R. Co. v. Tompkins, 304 U.S. 64 overruling Swift v. Tyson, 16 Pet. 1, held that federal courts sitting in diversity cases, when deciding questions of "substantive" law, are bound by state court decisions as well as state statutes. The broad command of Erie was therefore identical to that of the Enabling Act: Federal Courts are to apply state substantive law and federal procedural law. - - -
>
> Erie v. Tompkins, West Black's Law Dictionary 6th Edition p. 542.
>
> The landmark case holding that in an action in the Federal court, except as to matters governed by the U.S. Constitution and Acts of Congress, the law to be applied to any case is the law of the State.

Clearly the judgment and injunction in the case of Perry v. Barnard et. al., violates all the precedent cited above with the undeniable intent set forth very clearly in the F. Supp. 745 (supra).

Therefore as a matter of law, the judgment and injunction placed by this United States District Court and Judge John Daniel Tinder on September 26, 1989, must be voided. There must be an Order issued voiding the said judgment and injunction, immediately and retractions and repairs to reference materials made showing the correction by reason of the void judgment and injunction, with all other just and proper relief in the premises.

Respectfully submitted by;

"s/ "

Lloyd G. Perry, Pltf. pro se
2007 South Phillip Drive
Muncie, Indiana 47302
Phone (765) 282-7924

CERTIFICATE OF SERVICE

I, Lloyd G. Perry, the undersigned, do certify that true and exact copies of this Motion For Relief From Judgment, Supporting Brief and Motion to Shorten Response Time were sent to the offices of Theadore Lockyear at 555 Sycamore Street, Evansville, Indiana 47734-3515 and to the office of Deputy Attorney General For The State Of Indiana, Robert Spears, % Jeff Monosett, Indiana Government Center South, 5th Floor, 402 West Washington, Street, Indianapolis, Indiana 46204; by deposit of the same in the United States Postal Service, postage pre-paid and addressed as stated above on or before December 27,1999.

"s/ "

Lloyd G. Perry

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LLOYD G. PERRY, Plaintiff,	)	
vs.	)	EV 88-24-C
LINDA K. BARNARD, et al., Defendants.	)	

ORDER ENJOINING PLAINTIFF PERRY

Lloyd G. Perry is hereby permanently ENJOINED from filing (or having filed on his behalf) in any federal district court without leave of that court, any lawsuit arising out of or related to Perry v. Gresk, No. EV 84-174-C (S.D. Ind. February 21, 1986) (unreported), aff'd, No. 86 1765 (7th Cir. November 21, 1986) (unreported), as well as this cause of action.

Specifically, Perry is permanently ENJOINED from filing (or having filed on his behalf) in any federal district court without leave of that court, any lawsuit against one or more of the following parties who were named as defendants in either Perry v. Gresk or Perry v. Barnard:

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
CERTIFIED:
A TRUE COPY
"s/_____".
CLERK OR DEPUTY
6-6-97
GERALDINE
TREUTELLAR CROCKETT
CLERK

Paul D. Gresk
Ralph P. Zoercher
George Astrike
Tell City National Bank

William C. Welborn
Georgia Surety Company
C. Lawrence Jewett
Phillip C. Moulthorop
American Druggists' Insurancy Company
Insurance Company of North America
Lamar Street
Roger H. West
Kelco of Indiana, Inc.
Kelco Inc.
Tri-State Reclamation, Inc.
Roger S. Curry
Lee Ringman
Jasper State Bank
German American Bank
James DeMotte
David Hubster
Jasper Engine & Transmission, Inc.,
James J. Hartz
C.I.T. Corporation
Christopher Baker
Patrick McSoley
William Beckman
John B. Scales
Jennie L. Richardson
Raymond G. Fritz
George Meece, Jr.
State of Indiana, Division of Reclamation of the Indiana Department of Natural Resources
The Indiana State Attorney General
Larry E. Forler

Linda K. Barnard
Sheldon D. Breskow
Sherill Colvin
G. Daniel Kelley Jr.
Clifford Mashmeyer
James McDonald, Jr.James Puckett
Wesley W. Ratliff, Jr.
Itsia Rivera
Sarah B. Davies

Bruce Kotzan
Hansford Mann
James T. Neal
C. Corydon Randall
Randal T. Shepard
Thomas H. Singer
Howard S. Young, Jr.
Rabb Emison
Russ Hart

Perry is also permanently ENJOINED from filing (or having filed on his behalf) in any federal district court without leave of that court, any lawsuit arising out of or related to any issue of issues in Perry v. gresk, which was a complaint under 42 U.S.C. § 1983 and § 1985 with pendent state claims against various attorneys, parties and witnesses who were involved in previous lawsuits with Perry; and any lawsuit arising out of or related to any issue or issues in Perry v. Barnard, which was a complaint under 42 U.S.C. § 1983 against those defendants for failing to act on his requests for disciplinary action against various attorneys and judges who were also involved in previous lawsuits with Perry.

The following procedures are to be followed in order to comply with this injunction. In seeking leave to file a complaint concerning the above--stated matters, in this or any other federal district court, Perry (or anyone else acting in his behalf) must file with the complaint a motion captioned "Motion pursuant to Court Order Seeking Leave to File." The following documents must be attached to that motion: 1) a copy of this order and the accompanying entry and judgment; 2) a sworn affidavit certifying that the claims that he wishes to present are new claims never before raised by him in any state or federal court; 3) a list of the full captions of each and every suit previously filed by him or on his behalf against each and every defendant; 4) a copy of each such complaint and a certified record of its disposition. A copy of this order must be served on each defendant when and if leave to file the new case is granted. Any such action that Perry, or anyone acting on his behalf, seeks to file in any federal district court will not be file marked until the judge of that court grants Perry or anyone acting on his behalf leave to file.

Upon failure to comply with any of the terms of this injunction, Perry may be found in contempt of this court and

punished accordingly. Any defendant in any federal court suit who believes that Perry has failed to comply with the terms of this injunction may file an affidavit to that effect with the Clerk of the court, Southern District of Indiana, Evansville Division, under the EV 88-24-C docket number.

Nothing in this order shall be construed as affecting Perry's ability to defend himself in any criminal action. Nothing in this order shall be construed to deny Perry access to the federal courts through the filing of a petition for a writ of habeas corpus or other extraordinary writ. Nothing in this order shall be construed as denying Perry access to the United States Court of Appeals.

IT IS SO ORDERED this 26th day of September 1989.

"s/ "
John Daniel Tinder, Judge
United States District Court

copies to;
Lloyd G. Perry
7999 Meadow Lane
Newburgh, IN. 47630

Robert Spear
Deputy Attorney General
Office of the Attorney General
Room 219, State House
Indianapolis, IN 46204

Ted Lockyear
Lockyear & Lockyear
555 Sycamore Street
P.O. Box 3515
Evansville, IN 47734-3515

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LLOYD G. PERRY,	)	
Plaintiff,	)	
vs.	)	EV 88-24-C-T/H
LINDA K. BARNARD, et al.,	)	**EXPEDITED**
	)	**PROCEEDINGS**
Defendants.	)	**REQUESTED**

POST - JUDGMENT PETITION FOR REHEARING
AND/OR
MOTION TO RECONSIDER
ENTRY-ORDER OF DECEMBER 30, 1999

Comes now the Petitioner, Plaintiff, Lloyd G. Perry, in person and pro se and files his Post-Judgment Petition For Rehearing and/or Motion To Reconsider the Entry-Order Of December 30, 1999. Expedited Proceedings are Requested to prevent further damages to petitioner. The bases for filing this petition/ motion is on the following:

1. This U.S. District Court is once again in error as to the stated conditions within it's December 30, 1999 Order.

2. That the plaintiff has an interest in both the judgment and the injunction but the emphasis is placed on the injunction because (as you said in your Order) if the judgment is not correct the injunction is not correct.

3. That pursuant to the said 12/30/99 order, it must be proven that the District Court had no jurisdiction. This petition contains that proof.

4. That the failure of this U.S. District Court to Certify the Federal Question Challenge to the State of Indiana Supreme Court on the Challenge to the Constitutionality of Indiana Code 33-2-3-1 and I.C. 34-5-2-1, on plaintiffs motion to certify, and the failure to do so at the time of plaintiff's filing of the action stripped the said District Court of any Jurisdiction it might have had under Title 28 USCS § 1983 or the Federal Question Statutes of 28 USCS § 1331. (See S. Brf. attchmnt . 2)

8. That this District Court must have forgotten that the suit was filed for redress as a provision of 28 USCS § 1983 and the area into which the District Court was headed was exclusive to the Indiana Supreme Court. The complaint was, in a short statement, asking the U.S. District Court to review disciplinary matters related to attorney Gresk and others; that except for the certification and response from the Indiana Supreme Court, the U.S. District Court had no jurisdictional bases to redress any matter comming from the States Highest Court.

Therefore, the errors of this U.S. District Court and Judge John Daniel Tinder are clearly pointed out in this petition/motion and it's support brief with exhibits. This leaves the judgment and the injunction void and this U.S. District Court powerless to do anything but issue an order to void the said judgment and injunction of September 26, 1989 or immediately file a certification of the challenge to the said Indiana Supreme Court and wait on a response. (but first you must correct the record)

Perry respectfully requests an order GRANTING this petition/motion for rehearing
and voiding the said judgment and injunction of September 26, 1989, with all other just and proper relief in the premises.

Respectfully submitted by;

"s/ "

Lloyd G. Perry, Pet./Pltf.
2007 South Phillip Drive
Muncie, Indiana 47302
Phone (765)282-7924

CERTIFICATE OF SERVICE

As stated in support brief, service was by U.S. Mail on or before January 13, 2000, postage pre-paid or by personal delivery to Jan Kreuscher and Theadore Lockyear.

"s/ "

Lloyd G. Perry

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LLOYD G. PERRY,	)	
Plaintiff,	)	
vs.	)	EV 88-24-C-T/H
LINDA K. BARNARD, et al.,	)	
Defendants.	)	

BRIEF IN SUPPORT OF
POST-JUDGMENT PETITION FOR REHEARING
AND/OR
MOTION TO RECONSIDER
ENTRY-ORDER OF DECEMBER 30, 1999

Comes now the Petitioner, (Plaintiff) Lloyd G. Perry, in person and pro se and files his Post-Judgment Petition For Rehearing and/or Motion To Reconsider the Entry-Order Of December 30, 1999.

Perry states the following as bases for this Petition/Motion:

That in any instance where a petition for rehearing or motion to reconsider is filed, there must have been an error in judgment or in the facts stated in the judgment or a mistake. E.g. *Glendron v. United States*, 154 F.3d 672,674 (7th Cir. 1998) (citing *Figgie Int'l, Inc. v. Miller*, 966 F.2d 1178, 1180 (7th Cir. 1992)) We have all conditions present here.

ERRORS:

1. Both the judgment and the injunction are of interest to Perry but the emphasis was placed on the injunction because as you said without the correct judgment there can be no injunction. Lack of standing to sue under Title 42 USCS § 1983 takes away the Court's jurisdiction to further consider anything beyond the face of the complaint.

2. The primary issue here is that this U.S. District Court Lacked Subject Matter Jurisdiction because it was encroaching upon the exclusive jurisdiction of the Indiana Supreme Court pursuant to *Indiana Code 33-2-3-1* and the *Indiana Constitution, Article III, § 1.* and *Article VII., § 4.* The

error made here by this U.S. District Court was by not certifying the Constitutional Challenge to the Indiana Statutes of *Indiana Code 34-5-2-1 and Indiana Code 33-2-3-1* to the Indiana Supreme Court as requested at the time of filing of the complaint but waiting till the time of appeal to the 7th Circuit Court Of Appeals and Perry's second Notice before certifying the constitutional challenge, but the certification went to the 7th Circuit and not the Indiana Supreme Court as required. See e.g. *28 USCS § 1331 and e.g. 28 USCS § 2403(b) and e.g. Merrill v. Addison, (1985 CA 2 NY)* 763 F. 2d 80.

The bases is that the Title *42 USCS § 1983 suit* was clearly stated in the plaintiff's complaint: Redress for no disciplinary action and what amounts to an illegal boycott.

> That jurisdiction of this said District Court is found in Title 42 U.S.C.S. § 1983, (1986 Edition) which gives Perry the right to redress of his issues that have deprived him of his property and recovery of damage[s]. (Complt. p. 2 second paragraph)

The request for certification was for the issues to go to the Indiana Supreme Court. However, Judge Tinder issued an Order to the Clerk to make a notation of the Motion For Certification but not to do anything else with it. At that point in time, what ever jurisdiction the District Court had, it lost because the certification and the opinion of the Indiana Supreme Court was determinative of both jurisdiction and subject matter jurisdiction because of the exclusive jurisdiction of these matters held by the Indiana Supreme Court. See Uniform Certification Of Questions of Law Act; also e.g. *Clay v. Sun Insurance Office Limited*, 363 U.S. 207 at 207; also e.g. *Jones v. City of Lubbock* 727 F.2d 364 at 364. The point is that while the case did include state officials and was represented by the State Attorney General, the State Attorney General had no more right to act for the Indiana Supreme Court than did the District Court where the jurisdiction was exclusive to the Indiana Supreme Court and amounted to a review of the Indiana Supreme Court's final judgment related to no discipline of attorney Gresk and others.

To take the matter of jurisdiction a step further you must look then at the judgment of Judge Tinder in the judgment Titled Order Regarding Plaintiff's "Notice To The Clerk Of

Constitutional Question Challenging The Constitutionality Of An Act Of Congress, signed and dated by Judge Tinder December 12, 1989. This Order instructs the Clerk to Certify the Notice to the Seventh Circuit pursuant to App. R. Civ. P. 44. The problem is that this is the second notice and he is over a year late in the ordering; and the documents that should have been certified, were plainly titled as Plaintiff's Attack on Constitutionality of State Statutes, also Motion For Certification To The Indiana Supreme Court. However, these documents are not listed on the docket in the Archives, but the Order directing the Clerk not to certify them is.

Now we must consider the case cited as *Perry v. Barnard* 745 F. Supp. 1394 at 1408, which states that the Court and Judge Tinder used *28 USCS § 1651* to obtain jurisdiction to write the writ (injunction). With this then must be considered that in the Order of December 14, 1988 Judge Tinder ruled that Perry had no standing to sue. (see attached exhibits from Archives) On this bases in a *Title 42 USCS § 1983* case jurisdiction ends and nothing can be done but they went on to September 26, 1989 and wrote the injunction using the said *§ 1651.* Now after this, and the State Attorney General ruled that the statutes of *I.C. 33-2-3-1 and I.C. 34-5-2-1* were Constitutional in his Supplemental Brief in response to the Court's Order of May 11,1989. (Sup. Brief p. 5.)

In view of the fact the exclusive jurisdiction statements are all over the place in the cited statutes and Perry was attempting to comply with the terms of the provisions of the said *Title 28 USCS § 2403(b)* if applicable and the *28 USCS § 1331* and the procedure stated in the *Federal Procedure publication* on certification in such matters. ONE conclusion must be drawn from all of this. It was an evasive tactic to avoid the effects of the Indiana Supreme Court and the immediate review by the U.S. Supreme Court . They knew they didn't have jurisdiction and admitted the fact in the Federal Suppliment cited above e.g. 745 F. Supp. 1394 at 1408. Therefore the judgment and injunction of September 26, 1989 are void for want of jurisdiction.

The failure of Judge Tinder to certify the Federal Question to the Indiana Supreme Court per Perry's request, voided any jurisdiction on the bases of the exclusive jurisdiction because the complaint was asking for a redress and cited only

Title 42 USCS § 1983 as the bases for jurisdiction. The only way into that exclusive jurisdiction was by the certification to the Indiana Supreme Court and wait on their decision.

The final point is that the docket sheets do not list the documents filed by Perry at the time of filing his complaint but most but not all of them are in the files at the archives. The exhibits hereon attached are from those documents.

The file is incomplete and must be corrected with notations made as to missing parts, and entries made where documents are, but are not listed on the docket. A complete record is required in the Original Action in the Indiana Supreme Court as to any part of the record that goes to jurisdiction, this record is not complete and is in a mess as far as being properly listed.

SUMMARY:

When the Federal District Court takes a Federal Question Jurisdiction case, normal practice is to certify the State Attorney General or the U.S. Attorney General as the defendants are as to being state or federal related. If the Federal Question is not determative of the merits of the case the Federal District Court is not in serious error for not determining the Constitutionality but the Court of Appeals must take it up. See *Merrill v. Addison (supra), Jones v. City of Lubbock, (supra) but with emphasis Clay v. Sun Insurance Office Limited (supra)* What they tell you is that the jurisdiction is not lost in the challenge to the constitutionality of a State Statute because the Court didn't rule on the matter. But if the Federal Question is determinative to the merits of the case, upon a petition for rehearing the Court must make the certification and wait on the decision of the State Supreme Court. The certification must be made to maintain the judgment and jurisdiction. E.g. 735 F. Supp. 363 at 364.

However the exception to the rule in this instance case is that the jurisdiction of the Federal District Court can not be obtained under Title 42 USCS § 1983 for redress without first certifying the matters to the State Supreme Court because the issues are directly related to the case and merits of Perry v. Gresk EV 84-174-C and the matters of discipline and failure to discipline by the same Indiana Supreme Court. On redress of the subject of failed disciplinnary action, the merits of Perry v. Gresk

would become part of the instance case of Perry v. Barnard. In essence this amounts to a review of the final order ot the States Highest Court by the District Court. This is clearly barred by the *Rooker - Feldman Doctrine, The United States Constitution Article III., Section 2., clause 2.*. So one can see the results of the State Supreme Court refusing to follow it's own rules and laws; and deny the filing of an original action to clear up the matters within it's own setting. (This condition does not now exist but it is what we must now deal with.) Add to this the evasiveness of this U.S. District Court of the rules of certification and exclusive jurisdiction of the State Supreme Court's rights and the damages flow freely as a consequence.

Within the case laws cited above, it is clear that this U.S. District Court and Judge Tinder are bound to reverse their judgment and immediately certify the matters to the Indiana Supreme Court or in the alternative, void the judgment and injunction and let the higher courts deal with the damages and Perry's Complaint, for the jurisdiction is in the Indiana Supreme Court and not this District Court, without the said certification.

Petitioner, Plaintiff, Lloyd G. Perry, respectfully requests that this United States District Court void the judgment and injunction placed on September 26, 1989; and retrieve the full and complete record from the National Archives and correct the record, docket listings and missing parts as stated ; and to be sure that Perry has a full and complete record, (at Perry's expense), prepare a certified copy of the record as required for use in the Indiana Supreme Court, with all other just and proper relief in the premises.

Respectfully submitted by;
"s/ "
Lloyd G. Perry, Pltf. pro se
2007 South Phillip Drive
Muncie, Indiana 47302
Phone (765)282-7924

CERTIFICATE OF SERVICE

I, the undersigned, Lloyd G. Perry do certify that true and exact copies of the foregoing brief and petition/motion were served on defendants counsel, Theadore Lockyear and Jan Kreuscher by deposit in the U.S. Mail or personal delivery on or

HEALY v. JAMES 33L Ed 2d 865 @ 896

Supreme Court;

In answer to the defendant's allegations that the mere existence of the statute tended to inhibit the exercise of constitutionally protected rights by engendering an unhealthy fear that one could find himself unwillingly embroiled in criminal liability held that the statute was not unconstitutional because it provided that a defendant had to be proven to have had knowledge of the proscribed advocacy of illegal aims before he could be convicted. It is, of course true that quasi political parties or other groups that may embrace both legal and illegal aims differ from a technical conspiracy, which is defined by its criminal purpose, so that all knowing association with the conspiracy is a proper subject for criminal prosecution as far as First Amendment liberties are concerned, explained the court. If there were a similar blanket prohibition of association would be impaired, said the court, but deeper into freedom of association than is necessary to deal with the substantive evils that Congress has a right to prevent. Thus the court concluded, the member for whom the organization is a vehicle only for the advancement of legitimate aims and policies does not fall within the ban of the statute, for he lacks the requisite specific intent to bring about the overthrow of the government as speedily as circumstances will permit.

Constitutional Provisions

United States Constitution:

A. Article III., Section 2. clause 1. & 2. West Black's Law Dictionary, Sixth Edition, p. 1644.

Section 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions and under such Regulations as the Congress shall make.

B. Article IV., Section 4. West Black's Law Dictionary, Sixth Edition p. 1645.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

C. Article I., Section 6, clause 1. West Black's Law Dictionary, Sixth Edition, p. 1640

Section 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of

the United States. they shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Constitution of Indiana

A. Article I., § 12, Burns Indiana Statutes, Constitutions 1997 Replacement, p. 30.

§ 12. Courts open - Due course of law - Administration of justice. -- All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase, completely, and without denial; speedily, and without delay. [As amended, P.L. 383-1983, as adopted Nobember 7, 1984.]

B. Article III., § 1., Burns Indiana Statutes, Constitutions 1997 Replacement, p. 204.

§ 1. Three departments. - The powers of the Government are divided into three departments; the Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

C. Article VII., § 4., Burns Indiana Statutes, Constitutions 1997 Replacement, p. 277.

§ 4. Jurisdiction of Supreme Court. - The Supreme Court shall have no original jurisdiction except in admission to the practice of law; discipline or disbarment of those admitted; the unauthorized practice of law; discipline, removal, and retirement of justices and judges; supervision of the exercise of jurisdiction by the other courts of the State; and issuance of writs necessary or appropriate in aid of its jurisdiction. The Supreme Court shall exercise appellate jurisdiction under such terms and conditions as specified by rules

except that appeals from a judgment imposing a sentence of death, life imprisonment or imprisonment for a term greater than fifty years shall be taken directly to the Supreme Court. The Supreme Court shall have, in all appeals of criminal cases, the power to review all questions of law and to review and revise the sentence imposed. - - As amended - -

Statutes Involved:

1. 28 USCS § 144, Federal Rules of Civil Procedure by Foundation Press, p. 566.

§ 144. Bias or prejudice of judge.

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it with such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith. - - -

2. 28 USCS § 455, Federal Rules of Civil Procedure by Foundation Press, pp. 569-571.

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with

whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affectd by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceedin[g].

3. Public Law .100-702 [H.R. 4807] (Judicial Improvment and Access To Justice) Act 102 STAT. 4642, at STAT. 4650-4651.

Sec. 403 Rules by Certain Courts and Orders by Circuit Judicial Councils and the Judicial Conference.

(a) Rules by Certain Courts, --(1) Section 2071 is amended - -

(A) by inserting "(a)" before "The"

(B) by striking out "by the Supreme Court" and inserting in lieu thereof "under section 2072 of this title"; and

(C) by adding at the end the following:

"(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed

only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order. (102 STAT. 4650)

"(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

"(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

"(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

"(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

"(f) No rule may be prescribed by a district court other than under this section." (102 STAT.4651)

4. 28 USCS § 1254(1), Federal Rules of Civil Procedure by Foundation Press, 1998, p. 574

§ 1254. Courts of appeals; certiorari; certified questions
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

5. 28 USCS § 1257, Federal Rules Of Civil Procedure by Foundation Press, 1998, p. 575.

§ 1257. State courts; certiorari
(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State drawn in to question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United States.

6. 28 USCS § 1331. Federal question, Federal Rules of Civil Procedure by Foundation Press, 1998, p. 580

§ 1331 Federal Question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. - - -

7. 28 USCS § 1651(a) & (b), Federal Rules of Civil Procedure by Foundation Press, 1998 p. 610.

§ 1651. Writs (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. As amended May 24, 1949, c. 139, § 90, 63 Stat. 102

8. 28 USCS § 1343(a) & (b), Federal Rules of Civil Procedure by Foundation Press, 1988 p. 584.

§ 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section -

(1) the District of Columbia shall be considered to be a

State; and
(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. As amended Sept. 3, 1954, c 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, § 121 71 Stat. 637; Dec. 29, 1979, Pub. L. 96-170, § 2, 93 Stat. 1284.

9. 28 USCS § 2201(a), Federal Rules of Civil Procedure by Foundation Press, 1998, p 630

§ 2201. Creation of remedy

(a)In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

10. 28 USCS § 2202, Federal rules of Civil Procedure by Foundation Press, 1998, p. 631.

§ 2202. Further relief.

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

11. 42 USCS § 1983, 1994 Replacement p. 1.

§ 1983. Civil action for deprivation of rights

Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or

Territory or the District of Columbia , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District Of Columbia (R.S. § 1979; Dec. 29, 1979, P.L. 96-170, § 1, 93 Stat. 1284.)

12. 42 USCS § 1985, 1994 Replacement p. 8,9

§ 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be preformed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory comspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or his being or having been such juror; or if

two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons with such State or Teritory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspiratiors. (R.S. § 1980)

13. Indiana Code 33-2-3-1,1997 Replacement pp. 113-114
Sec. 1. The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to

issue restraining orders and injunctions in all cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe.

14. Rooker - Feldman Doctrine, Rutgers Law Review Vol. 42:859 at 860-861.

State Supreme Court decisions, Rooker v. Fidelity Trust Co., and District of Columbia Court of Appeals v. Feldman. In essence, the doctrine stands for the proposition that federal district courts do not have jurisdiction to review the judgments of state courts. "It is a principle as old as our dual state and federal judicial systems," said a Tenth Circuit court, "that a federal district court is without jurisdiction to interfere with a judgment in a state court action in which the state court had jurisdiction of the subject matter and of the parties thereto."

The Rooker - Feldman doctrine is based upon "principles of statutory construction and negative inference."The statutes involved are those granting jurisdiction to the Supreme Court and to the federal district courts. 28 U.S.C. section 1257 grants the Supreme Court the right to review "[f]inal judgments . . rendered by the highest court of a State in which a decision could be had." Because Congress has not granted any other federal court the right to review state court judgments, it may be inferred that the Supreme Court's jurisdiction under section 1257 is exclusive. Congress has granted the federal district courts original jurisdiction under several other statutes, principally 28 U.S.C. sections 1331 and 1332. Because they have been granted only original jurisdiction, it may be further inferred that district courts may not engage in appellate review of state decisions. As one writer observed, "[t]his limitation is an obvious statutory corollary of the Statutory grant to the Supreme Court of exclusive power to review state court judgments. The term 'original' as used in the statutes clearly negates, as a matter of statutory construction, any implied 'appellate' jurisdiction."

As the Supreme Court stated during its 1988 term,

"[t]he Rooker - Feldman doctrine interprets 28 U.S.C. section 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in this Court." If allowed, "[t]he effect of such a jurisdiction would be to displace almost the whole of state litigation into the federal courts by making the final judgment in the state court the cause of action that kicks off a suit to undo that judgment in federal court." According to most courts, this is the most significant rational behind the Rooker - Feldmen principle: "In this nation we have two 'essentially separate legal systems.' . .[T]his dual system could not function if state and federal courts were free to fight each other for control of a particular case."

The thesis of this Note is that the Rooker - Feldman doctrine is unnecessary and potentially harmful. The rationale that underlies the doctrine is adequately promoted by other principles that guard against federal review of state court judgments. - - - -